

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

TRACI L. MILLER,

Plaintiff,

v.

NANCY BERRYHILL, Acting
Commissioner of Social Security,

Defendant.

8:18CV120

ORDER

This matter is before the Court on plaintiff Traci L. Miller’s (“Miller”) petition for attorney fees and costs (Filing No. 23) pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412. The EAJA authorizes an award of “fees and other expenses” to a “prevailing party” in a case against the United States, “unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust.” *Id.* § 2412(d)(1)(A). An award of fees under § 2412(d) “is payable to the [prevailing] litigant and is therefore subject to a Government offset to satisfy a pre-existing debt that the litigant owes to the United States.” *Astrue v. Ratliff*, 560 U.S. 586, 589 (2010).

Based on a declaration (Filing No. 23-1) from her counsel Wes Kappelman (“Kappelman”) and an itemization totaling 10.6 hours of attorney time, Miller requests \$2,136.52 in attorney fees under § 2412(d) and \$400 for reimbursement of the cost of the filing fee under § 2412(a). Defendant Nancy Berryhill, Acting Commissioner of Social Security (“Commissioner”), does not object to an award of fees and costs in this case (Filing No. 24).

Upon careful review, the Court finds (1) Miller is a “prevailing party” under the EAJA and is eligible for an award, (2) her request is timely, (3) the Commissioner’s

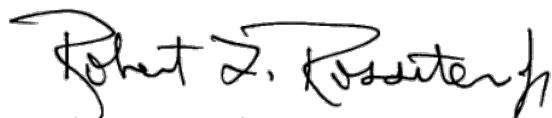
position was not “substantially justified,” and (4) no “special circumstances” exist in this case that would make an award to Miller unjust. The Court further finds that Kappelman’s commitment of 10.6 hours to this case and his requested hourly rates are reasonable and supported by the record. *See id.* § 2412(d)(2)(A)(ii); *Johnson v. Sullivan*, 919 F.2d 503, 505 (8th Cir. 1990) (holding that when “an EAJA petitioner presents uncontested proof of an increase in the cost of living sufficient to justify hourly attorney’s fees of more than [the amount specified in the EAJA], enhanced fees should be awarded”). Accordingly,

IT IS ORDERED:

1. Plaintiff Traci L. Miller’s petition for attorney fees and costs (Filing No. 23) pursuant to the Equal Access to Justice Act is granted.
2. Miller is awarded attorney fees of \$2,136.52 and costs of \$400, subject to offset against any debts Miller may owe to the United States.
3. The attorney-fee award is payable directly to Miller by the Social Security Administration. *See* 28 U.S.C. § 2412(d)(4). The reimbursement of costs is payable directly to Miller out of the judgment fund administered by the Secretary of the Treasury. *See* 28 U.S.C. § 2412(c)(1) (citing 28 U.S.C. § 2414).
4. If consistent with the Commissioner’s and the Department of Treasury’s practices, the EAJA payments may be mailed to Miller’s counsel, Wes Kappelman.
5. A separate judgment will be issued in accordance with this Order.

Dated this 19th day of March 2019.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Robert F. Rossiter, Jr.", with a stylized flourish at the end.

Robert F. Rossiter, Jr.
United States District Judge